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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: SILICON IMAGE, INC.
SECURITIES LITIGATION,

In Re,

LANDON CURRY; WILLIAM S.
HAYMAN; JOHN HERLIHY,

Plaintiffs - Appellants,

v.

SILICON IMAGE, INC. SECURITIES
LITIGATION; STEVE TIRADO;
ROBERT GARGUS; DAVID LEE,

Defendants - Appellees.

No. 07-16947

D.C. No. CV-05-00456-MCC

MEMORANDUM *

Appeal from the United States District Court
for the Northern District of California
Maxine M. Chesney, District Judge, Presiding

Argued and Submitted April 14, 2009
San Francisco, California

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Before: T.G. NELSON, KLEINFELD and M. SMITH, Circuit Judges.

Plaintiffs appeal the dismissal of their fourth amended complaint in this class action securities lawsuit. We affirm.

Plaintiffs have failed to allege specific facts showing that the statements in the press releases or SEC filings were false or misleading. See 15 U.S.C. § 78u-4(b)(1); Fed. R. Civ. P. 9(b). The alleged omissions did not “affirmatively create an impression of a state of affairs that differ[ed] in a material way from the one that actually exist[ed].” Brody v. Transitional Hosps. Corp., 280 F.3d 997, 1006 (9th Cir. 2002); see 17 C.F.R. § 240.10b-5(b).

This analysis of the complaint’s falsity allegations makes unnecessary any determination of whether the facts pleaded, considered as a whole, give rise to a strong inference of scienter. Cf. Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, ___, 127 S. Ct. 2499, 2508–10 (2007); Zucco Partners, LLC v. Digimarc Corp., 552 F.3d 981, 1006–08 (9th Cir. 2009); S. Ferry LP, #2 v. Killinger, 542 F.3d 776, 784–85 (9th Cir. 2008). Plaintiffs have not alleged facts showing that any statements were false or misleading.

The district court did not abuse its discretion in dismissing plaintiffs' complaint without leave to amend. See In re Vantive Corp. Sec. Litig., 283 F.3d 1079, 1097 (9th Cir. 2002). Plaintiffs have failed to cure the complaint's deficiencies, despite detailed guidance from the district court and four prior opportunities to do so. Plaintiffs have not pointed to any additional facts that they could allege to cure the deficiencies. Metzler Inv. GMBH v. Corinthian Colls., Inc., 540 F.3d 1049, 1072 (9th Cir. 2008). Plaintiffs plead, in substance, bad management rather than false statements.

AFFIRMED.